

19/1/11

STATE OF CALIFORNIA

BOARD OF EQUALIZATION

BUSINESS TAXES APPEALS REVIEW SECTION

In the Matter of the Late )  
Protest and Petitions for )  
Redetermination Under the )  
Hazardous Substances Tax Law of: )

DECISION AND RECOMMENDATION

Nos. F

Petitioner

The Appeals conference in the above-referenced matters was held by Staff Counsel Rachel Aragon on , in Culver City, California.

Appearing for Petitioner:

Appearing for the Department  
of Toxic Substances Control:

Colleen Murphy  
Staff Attorney

Manuel Henriquez  
Supervising Tax Auditor

Protested Items

The protested tax liability is interest on Disposal Fee Account No. ; interest on Superfund Account No. ; and interest on Generator Fee Account No.

Petitioner's Contention

Interest should be assessed from the date petitioner was notified a fee was due.

### Summary

Petitioner owned and operated a business in  
a. Petitioner is now retired and is no longer in  
business. Twelve manifests were completed by petitioner which  
accompanied hazardous waste sent to landfills or recycled during  
August and September 1987. The waste consisted of either  
contaminated soil or solvents.

Petitioner was issued a Notice of Determination on all  
three cases. All of the notices included interest and a penalty.  
Petitioner paid the tax on all three cases but disputed the  
penalty and the interest. Petitioner stated that the interest  
should have started to accrue from the due date on the Notice of  
Determination. The Department of Toxic Substance Control waived  
the penalty but stated that the interest was statutory and could  
not be waived.

Carol Bailey of the audit section of the Environmental  
Fees Department of the State Board of Equalization (Department)  
stated that the Generator fee was based on a determination and  
not on a return. Department policy during this reporting period  
was that interest did not start to accrue until 30 days after the  
date of the notice. A Notice of Determination for \$2,156 was  
sent to petitioner on March 9, 1992 as determined from July 1,  
1987 through June 30, 1988.

Interest on the generator fee did not begin to accrue  
until April 10, 1992, after the notice of determination was  
issued; therefore, the interest on this account is not in  
dispute.

The Department also stated that on November 23, 1988, a  
letter was mailed by the Excise Tax Unit of the State Board of  
Equalization to petitioner. The letter notified petitioner that  
a Hazardous Waste Tax Return allowing her to report and remit tax  
on the disposal would be sent to her. She was also informed that  
she would receive a Hazardous Waste Disposal Annual Report  
(Superfund) at the end of each year with instructions and  
explanations. The letter further informed petitioner that Health  
and Safety Code sections 25174 and 25342 were applicable to  
hazardous waste.

The Department stated that this letter was automatically generated when a reporting number was assigned, and that the annual report and return was also automatically generated and mailed to taxpayers who had a tax reporting number (as petitioner had).

The Department stated that the Disposal fee was based on a return which petitioner was required to file and pay. The Hazardous Waste Fee (Superfund) was based on a report which petitioner was required to file. The Department then billed taxpayer based on the report (amount of tonnage, type of disposal).

The Department stated that interest began to accrue on these two accounts from the date the payments were due, as provided by statute, and not on the date of the Notice of Determination.

#### Disposal Fee

The Disposal Fee Tax return was due and payable on January 15, 1988 for the 1987 year. Petitioner did not file a tax return or pay the fee for 1987. The Department was informed in September 1991 by the Department of Health Services that petitioner had generated and disposed of hazardous waste in 1987. A Notice of Determination was issued on March 9, 1992 in the amount of \$1,806 as determined from July 1, 1987 through December 31, 1987. Interest began to accrue on January 16, 1988.

#### Superfund Tax

The Hazardous Substance Tax report for 1987 was due on March 1, 1988. The Department produces a bill based on the report. The tax was due on July 1, 1988. Petitioner did not file a report for 1987. The Department was informed in September 1991 by the Department of Health Services that petitioner had generated hazardous waste. A Notice of Determination was sent to petitioner on March 9, 1992 for the Hazardous Substance Fee (Superfund) from January 1, 1987 through December 31, 1987 for \$1,459.76. The Notice included interest from July 1, 1988.

On February 6, 1989 petitioner mailed the annual superfund tax report which covered the 1988 calendar year. On February 22, 1989 petitioner mailed in the Hazardous Waste Tax return for the period July through December, 1988 with a check covering the amount due. Although petitioner disposed of waste in 1987, petitioner did not file a report or pay the tax for 1987.

### Analysis and Conclusions

Revenue and Taxation Code section 43156 provides that any tax not paid on the date when due and payable shall bear interest from and after that date until paid.

### Disposal Fee

Section 25174.1 of the Health and Safety Code as it read under the period in question, imposed a disposal fee on each person who annually submitted more than 500 pounds of hazardous waste for disposal. Section 43151 of the Revenue and Taxation Code provides that the disposal fee is due and payable to the Board, and that a return must be filed with the Board quarterly on or before the last day of the calendar month following the quarterly period for which the fee and return are due. "The taxpayer shall deliver the return, together with a remittance of the amount of tax due, to the office of the board on or before the last day of the month following the quarterly period for which the tax is due."

### Hazardous Substances (Superfund) Tax

Health and Safety Code section 25342, for the period in question, provided that every person who submitted more than 500 pounds of hazardous waste for disposal off site during the preceding calendar year shall report to the board the total amount of hazardous waste that person has disposed of, or submitted for disposal in the state.

Health and Safety Code section 25345, for the tax period in question, imposed a tax payable annually, and to be collected by the board, based upon each ton or fraction thereof, of waste and material specified in Section 25342, in accordance with the formula as set out in Section 25345.

Petitioner filed returns and reports in 1989 for the waste produced and disposed of in 1988. Petitioner knew that she had produced hazardous waste in 1987 which is evidenced by petitioner's hazardous waste manifests dated August and September 1987. Petitioner knew or should have known that returns, reports, and payment were also due for 1987.

The interest on the Superfund Fee and the Disposal Fee was properly assessed. There is no provision of the law which allows relief from the interest in this case.

Recommendation

It is recommended the late protest and petitions be denied.

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Rachel Aragon, Staff Counsel

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Date

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